

**Federal Defenders
OF NEW YORK, INC.**

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

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BY ECF

Honorable Vernon S. Broderick
United States District Judge
Southern District of New York
40 Centre Street
New York, NY 10007

**Re: *United States v. Sayfullo Saipov*
17 Cr. 722 (VSB)**

Dear Judge Broderick,

We write to request a limiting instruction regarding GX 1145, which was admitted into evidence over Mr. Saipov's objections. As we articulated during the charge conference,

the jury needs to be given some guidance as to how to – what kind of appropriate weight is due that honorific title that ISIS ostensibly bestowed on Mr. Saipov as a soldier of the caliphate and be instructed just how ISIS called him the soldier of the caliphate doesn't mean that he became a member of the group and doesn't resolve that his purpose was to gain entry into the organization.

Tr. 1350. The Court specifically allowed us to make this application: "If there is an issue with regard to a specific exhibit that you want to propose a -- some form of curative instruction, I would consider it with regard to 1145." Tr. 1351.

GX 1145—which is an excerpt from al-Naba' magazine, in which ISIS purportedly claimed responsibility for Mr. Saipov's truck attack after he had been arrested for it, *see* Tr. 774-75—was ultimately admitted by the Court on the grounds that an exception to hearsay applied: statements against penal interest pursuant to Fed. R. Evid. 804(b)(3). *See* Dkt. No. 300 (government arguing "the statement is against ISIS's interest because accepting responsibility for the murder of eight people exposed ISIS to criminal liability. Any reasonable person would perceive a global announcement accepting responsibility for a fatal terrorist attack as detrimental to his own penal interest").

Specifically, we ask the Court to instruct the jury as follows:

GX 1145 is the issue of al-Naba' magazine, which contains statements made by ISIS regarding the truck attack after Mr. Saipov was arrested and charged. The jury may consider GX 1145 as evidence of ISIS's own criminal interests, priorities, and patterns of behavior.

The jury may not, however, consider GX 1145 as evidence of whether Mr. Saipov's motive for the truck attack was to gain entry into the organization. ISIS's claims about Mr. Saipov being a soldier of the caliphate are not evidence of Mr. Saipov's purpose in committing the attack.¹ You—and only you—can determine if Mr. Saipov intended to become a member of ISIS.

Sincerely,

/s/

David Patton
Andrew J. Dalack
Sylvie J. Levine
David Stern

cc: Government Counsel

¹ In addition, it would be improper for the government to argue that the jury may draw a different inference.